

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MAURICE JOHNSON,

Petitioner,

ORDER

v.

08-cv-636-bbc

GLEN HEINZL, M.D. HSU Physician;
CANDACE WARNER, HSU Unit Manager;
MILDRED PARISE, ICE Examiner;
SHARON ZUNKER, ICE Examiner;
TOM GOZINSKE, CCE; and
AMY SMITH, OOS Examiner,

Respondents.

In an order entered November 18, 2008, I dismissed plaintiff's complaint, concluding that he had pleaded himself out of court on his Eighth Amendment claim by alleging that defendants took action to address plaintiff's medical needs. Plaintiff appealed, and the Court of Appeals for the Seventh Circuit affirmed. Johnson v. Heinzl, Case No. 08-4034, slip op. (7th Cir. Jan. 20, 2009) (unpublished opinion), dkt. #15 in this case. Now plaintiff has filed a motion in this court for reconsideration of the November 18, 2008 order dismissing the case, arguing that it was error to dismiss his complaint without first allowing him an opportunity to amend his complaint. It is far too late for plaintiff to challenge the

November 18, 2008 decision on that ground. If he believed it was error to dismiss his case without allowing him a chance to amend his complaint, he should have moved to alter or amend the judgment pursuant to Fed. R. Civ. P. 59 within ten days of entry of judgment before he filed his appeal, or he might have argued that point before the court of appeals. His chance to raise that argument has passed. Plaintiff's motion for reconsideration, dkt. #17, is DENIED.

Entered this 5th day of June, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge